

## EXHIBIT A

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12:30:14 1 Q. Who actually prepared the text of this  
12:30:16 2 e-mail?  
12:30:17 3 A. Mary Anne Tyler.  
12:30:32 4 Q. Can you tell me what this e-mail refers to?  
12:30:32 5 What is the \$869,055 Terry Nolan is being directed  
12:30:32 6 to release?  
12:30:33 7 A. That's the recoupment to the Commonwealth.  
12:30:36 8 Q. And can you explain to me why Terry Nolan is  
12:30:39 9 being instructed to release these funds to Cranberry  
12:30:44 10 Point Nursing Home?  
12:30:45 11 A. Yes. As I tried to explain to you, I think  
12:30:49 12 it was a very difficult thing, you might think this  
30:54 13 is odd, but to pay the Commonwealth the money they  
12:30:58 14 were owed, and I think we ultimately worked out an  
12:31:03 15 arrangement after talking to a whole bunch of people  
12:31:06 16 over there. As you can see, it took over a month  
12:31:10 17 from the closing. The original intention at the  
12:31:12 18 closing was simply to either wire the funds or to  
12:31:18 19 get funds over there from Fidelity, but they  
12:31:21 20 wouldn't accept a wire, because for some reason it  
12:31:25 21 would go into the general fund and not into the  
12:31:26 22 Medicaid funds if it was wired, so ultimately we had  
12:31:30 23 to find somebody over there that would agree to  
12:31:33 24 accept a check at some point, and I believe the

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12:31:37 1 arrangement -- Frank Barker made an arrangement  
12:31:43 2 with -- through, I guess, Landa's office that  
12:31:43 3 somebody would accept a check if they walked it  
12:31:46 4 over there, and it was on Cranberry's heading, so I  
12:31:51 5 think Andy and I sent a release to Nolan telling him  
12:31:58 6 to give the money to Cranberry, and Cranberry went  
12:32:02 7 over and paid the bill. They had made arrangements  
12:32:05 8 to pay it.

12:32:05 9 Q. So this e-mail is dated November 2 of 2004?

12:32:09 10 A. Looks like it, yes. It took a while to get  
12:32:12 11 it done. It was amazing.

12:32:14 12 Q. I think you had testified earlier that the  
32:16 13 money was going to be given at the closing to  
12:32:19 14 Goodwin, Procter & Hoar, and Goodwin, Procter & Hoar  
12:32:26 15 was to give the funds to the Commonwealth?

12:32:28 16 A. That's right. That was the original  
12:32:30 17 intention.

12:32:30 18 Q. And so was there a check written to Goodwin,  
12:32:35 19 Procter & Hoar at the closing in this amount?

12:32:40 20 A. I think it went -- well, actually, I don't  
12:32:44 21 know. I have to look at a settlement statement. I  
12:33:18 22 think it went to Goodwin. Where is the memo? I  
12:33:18 23 don't see it in there, but I think it was supposed  
12:33:19 24 to go to -- Goodwin was supposed to take it over,

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12:33:21 1 then that didn't work out. We made some calls over,  
12:33:24 2 I guess, to Medicaid, and they wouldn't take it, so  
12:33:26 3 I think it was deposited with Nolan, as I think back  
12:33:30 4 on it, and it was to be released from Nolan to  
12:33:38 5 Sucoff. I think there is a memo in these documents  
12:33:40 6 you have looked at this morning indicating we  
12:33:43 7 weren't to have any say about what happens to it, it  
12:33:48 8 was to go to Sucoff to take over when he made  
12:33:50 9 arrangements to do it, but then apparently Medicaid  
12:33:53 10 wanted our guys to bring it in or something.

12:33:59 11 Q. So as of the time of this November 2, 2004  
12:34:03 12 e-mail, the money had been sitting with Fidelity  
12:34:05 13 since the closing?

12:34:06 14 A. I think that's right.

12:34:09 15 Q. And it's your testimony what happened is,  
12:34:12 16 per this e-mail, is that Fidelity then cut a check  
12:34:17 17 to Cranberry Nursing Home for this amount; is that  
12:34:17 18 right?

12:34:20 19 A. I think they agreed that Frank Barker would  
12:34:23 20 take it in and pay it. That was the arrangements  
12:34:26 21 made with Medicaid, and to my knowledge it was paid,  
12:34:28 22 because there has been no claim against Epoch.

12:35:07 23 ATTY. HIGGINS: Let mark that as the  
12:35:08 24 next exhibit.

1 35:49 1 (Document marked as Exhibit 68  
12:35:49 2 for identification.)  
12:35:50 3 Q. Mr. McCullough, I'm handing you what has  
12:35:52 4 been marked as Exhibit 68. This appears to be a  
12:35:57 5 letter dated November 3, 2004, on your letterhead,  
12:36:02 6 signed by both you and Andy Sucoff; is that right?  
12:36:07 7 A. Yes.  
12:36:09 8 Q. Is there any reason why, in responding to  
12:36:11 9 your deposition subpoena, we didn't get this letter?  
12:36:15 10 A. I don't know that you didn't get it.  
12:36:19 11 Q. This obviously would have been a document in  
12:36:21 12 your files, correct?  
1 : 36:25 13 ATTY. GORDON: There were no documents  
12:36:26 14 produce in response to the deposition subpoena.  
12:36:31 15 ATTY. HIGGINS: I understand that, and  
12:36:33 16 my question is why not, why didn't we get this in  
12:36:36 17 response to the subpoena.  
12:36:37 18 ATTY. GORDON: Because there was an  
12:36:38 19 objection from the witness to producing documents.  
12:36:44 20 Q. Mr. McCullough, this document that we have  
12:36:46 21 just marked as Exhibit 68, is there a copy of this  
12:36:49 22 document in your files?  
12:36:53 23 A. I would think there probably is.  
12:36:55 24 Q. Is it your practice to maintain copies of

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12:36:58 1 correspondence? 108

12:36:58 2 A. This document, yes, I would say.

12:37:16 3 ATTY. HIGGINS: What was the basis for

12:37:17 4 the objection to producing documents responsive to

12:37:21 5 the subpoena? I don't know if I should direct this

12:37:22 6 to Mr. McCullough or his attorney. I think you said

12:37:25 7 the witness made an objection.

12:37:27 8 ATTY. GORDON: Well, I, as his counsel,

12:37:29 9 made an objection on his behalf.

12:37:32 10 ATTY. HIGGINS: Could you just state for

12:37:32 11 the record, because your letter does not so state,

12:37:35 12 what the basis of the objection is?

12:37:38 13 ATTY. GORDON: No.

12:37:39 14 ATTY. HIGGINS: No?

12:37:40 15 ATTY. GORDON: No.

12:37:41 16 ATTY. HIGGINS: You are refusing to

12:37:41 17 tell me why you objected to producing documents

12:37:44 18 responsive to the subpoena.

12:37:45 19 ATTY. GORDON: I'm refusing to answer

12:37:46 20 questions at this deposition. Mr. McCullough is the

12:37:54 21 deponent.

12:37:59 22 Q. Mr. McCullough, you see that this -- if you

12:38:01 23 look at the document that is attached to this

12:38:04 24 November 3 letter.

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1 38:13 1 A. Yes.

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12:38:13 2 Q. Now this check, which is in the amount of  
12:38:14 3 \$869,055, you see that, it is a Fidelity check, do  
12:38:20 4 you see that, and it's got -- somebody has written  
12:38:24 5 canceled across it; do you see that?

12:38:26 6 A. It says Fidelity National Title Insurance

12:38:28 7 Company?

12:38:28 8 Q. Yes.

12:38:29 9 A. Yes.

12:38:29 10 Q. And somebody has written canceled across it?

12:38:32 11 A. Yes.

12:38:32 12 Q. Is that your handwriting?

38:32 13 A. No.

12:38:34 14 Q. You sent this letter to Mr. Nolan, and you

12:38:46 15 requested that Mr. Nolan release a check in the

12:38:46 16 amount of \$869,055 made payable to Cranberry Point

12:38:46 17 Nursing Home, Inc., correct?

12:38:46 18 A. This is a joint letter from Sucoff and

12:38:48 19 myself.

12:38:50 20 Q. Correct.

12:38:51 21 A. That's correct. I have no idea looking at

12:38:56 22 this check who it is made out to. It says -- oh, it

12:38:59 23 says pay to the Commonwealth of Mass.

12:39:01 24 Q. Correct.

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12:39:41 1 (Document marked as Exhibit 69  
12:39:41 2 for identification.)  
12:39:42 3 Q. Mr. McCullough, I'm handing you Exhibit 69.  
12:39:49 4 The first page of that exhibit is a letter dated  
12:39:52 5 November 4, 2004 to Mary Anne Tyler of your office;  
12:39:56 6 do you see that?  
12:39:57 7 A. Yes.  
12:39:57 8 Q. The letter is from a woman named Jacquelyn  
12:40:00 9 Byrne at Fidelity National Title Insurance Company  
12:40:03 10 enclosing a check made payable to Cranberry Point  
12:40:06 11 Nursing Home in the amount of \$869,055, correct?  
12:40:11 12 A. Yes.  
40:11 13 Q. Is this also a letter a copy of which is in  
12:40:13 14 your files?  
12:40:18 15 A. I assume it would be, but I don't -- I mean,  
12:40:21 16 I don't have a memory of it.  
12:40:30 17 Q. This letter is dated November 4, 2004. Have  
12:40:38 18 you ever had -- strike that. From that date to the  
12:40:55 19 present have you had conversations with anyone at  
12:40:56 20 the Commonwealth of Massachusetts about this  
12:40:59 21 obligation, whether it's been paid, whether it's not  
12:41:01 22 been paid?  
12:41:02 23 A. No.  
12:41:19 24 Q. Mr. McCullough, are you familiar with an

:41:21 1 entity called Freid and Tobin Venture Partners? 111

12:41:25 2 A. No.

12:41:26 3 Q. To the best of your knowledge did any monies  
12:41:32 4 from any of the escrow funds that were established  
12:41:35 5 at the closing go back to any member of the Freid  
12:41:38 6 family?

12:41:39 7 A. Which escrows are you talking about?

12:41:41 8 Q. Any of the escrows that were established at  
12:41:44 9 the closing.

12:41:44 10 A. The Mellon escrows?

12:41:46 11 Q. Or the Fidelity escrows.

12:41:55 12 A. No, no monies, to my knowledge, went back to  
41:58 13 the sellers, or the Freids.

12:42:03 14 Q. And it's your understanding that the check  
12:42:06 15 that is made payable to Cranberry Point, the intent  
12:42:09 16 of that check was it was going to be deposited into  
12:42:14 17 that -- into a bank account, Cranberry Point bank  
12:42:17 18 account, and then a check was going to be written  
12:42:19 19 out to the Commonwealth of Massachusetts and then  
12:42:21 20 delivered to them?

12:42:23 21 A. I don't know if this check ultimately was  
12:42:25 22 endorsed over to the Commonwealth. Frank Barker had  
12:42:29 23 made arrangements with the Medicaid Division to  
12:42:32 24 obtain this check, and satisfactory arrangements,

12:42:36 1 that were satisfactory to Sucoff, and Goodwin  
12:42:39 2 Procter, and Epoch in that regard, and they  
12:42:42 3 obviously had had communications with the Medicaid  
12:42:45 4 office also to determine the correct pathway to pay  
12:42:48 5 this bill, and it's my understanding it was paid,  
12:42:51 6 otherwise Epoch would be screaming about it now,  
12:42:54 7 because they would have had their checks reduced.

12:42:59 8 Q. Do you have any understanding as to whether  
12:43:25 9 the current -- as to the current status of the  
12:43:28 10 ownership of the shares in The Pointe Group, Inc.

12:43:36 11 A. The Pointe Group Inc.; not off the top of my  
12:43:39 12 head I don't, no.

12:43:41 13 Q. How about any of the healthcare -- remaining  
12:43:44 14 healthcare entities that the Freid family is  
12:43:46 15 involved with; do you know whether the shares, in  
12:43:49 16 either the companies that own those entities, or the  
12:43:51 17 operating companies, whether those shares are still  
12:43:55 18 held by Georgia Freid and Mark Tobin?

12:43:59 19 A. I believe that's the case.

12:44:33 20 ATTY. HIGGINS: I don't think I have any  
12:44:34 21 other questions.

12:44:34 22 CROSS EXAMINATION

12:44:41 23 BY ATTY. WORCESTER:

12:44:41 24 Q. Mr. McCullough, my name is Courtney